



General Assembly

Substitute Bill No. 284

February Session, 2010

* SB00284GAE 032610 *

AN ACT CREATING A DIVISION OF ADMINISTRATIVE HEARINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) There shall be established
2 a Division of Administrative Hearings within the Commission on
3 Human Rights and Opportunities. The Division of Administrative
4 Hearings shall conduct impartial hearings of contested cases in
5 accordance with the provisions of sections 2 to 9, inclusive, and section
6 20 of this act and chapter 54 of the general statutes.

7 Sec. 2. (NEW) (*Effective October 1, 2010*) (a) For purposes of sections 2
8 to 9, inclusive, and section 20 of this act, (1) "administrative law
9 adjudicator" means a person whose primary duties are to conduct
10 hearings in contested cases and issue final decisions or proposed final
11 decisions and who is transferred to the Division of Administrative
12 Hearings pursuant to section 4 of this act or appointed by the Chief
13 Administrative Law Adjudicator pursuant to chapter 67 of the general
14 statutes; and (2) "Chief Administrative Law Adjudicator" means the
15 administrative law adjudicator designated by the executive director of
16 the Commission on Human Rights and Opportunities to serve as Chief
17 Administrative Law Adjudicator for a term of two years.

18 (b) The Chief Administrative Law Adjudicator, administrative law
19 adjudicators, assistants and other employees of the Division of
20 Administrative Hearings shall be entitled to the fringe benefits

21 applicable to other state employees, shall be included under the
22 provisions of chapters 65 and 66 of the general statutes regarding
23 disability and retirement of state employees, and shall receive full
24 retirement credit for each year or portion thereof for which retirement
25 benefits are paid for service as such Chief Administrative Law
26 Adjudicator, administrative law adjudicator, assistant or other
27 employee.

28 Sec. 3. (NEW) (*Effective October 1, 2010*) The Chief Administrative
29 Law Adjudicator shall be the chief executive officer of the Division of
30 Administrative Hearings and shall:

31 (1) Have all of the powers specifically granted in the general statutes
32 and any additional powers that are reasonable and necessary to enable
33 the Chief Administrative Law Adjudicator to carry out the duties of his
34 or her office;

35 (2) Assign administrative law adjudicators in all cases referred to
36 the Division of Administrative Hearings, provided, in assigning an
37 administrative law adjudicator to a case, the Chief Administrative Law
38 Adjudicator shall, whenever practicable, assign an administrative law
39 adjudicator who has expertise in the legal issues or general subject
40 matter of the proceeding;

41 (3) Have all the powers and duties of an administrative law
42 adjudicator;

43 (4) Prepare an edited version of a proposed final decision and final
44 decision that shall not disclose protected information in any case
45 where any provision of the general statutes, federal law, state or
46 federal regulations, or an order of a court of competent jurisdiction
47 bars the disclosure of the identity of any person or party or bars the
48 disclosure of any other information;

49 (5) Collect, compile and prepare statistics and other data with
50 respect to the operations of the Division of Administrative Hearings
51 and, not later than January first of each year, submit to the Governor

52 and the General Assembly a report on such operations, including, but
53 not limited to, the number of hearings held set forth according to
54 subject matter, the number of proposed final decisions rendered, the
55 number of partial or total reversals of such decisions by the agencies,
56 the number of final decisions rendered, the number of proceedings
57 pending and the amount of time devoted to each subject matter by the
58 division;

59 (6) Study the subject of administrative adjudication in all its aspects
60 and develop recommendations to promote the goals of impartiality,
61 fairness, uniformity and cost-effectiveness in the administration and
62 conduct of hearings of contested cases;

63 (7) Develop a program for the continuing education of
64 administrative law adjudicators in procedural due process and in the
65 substantive law of the agencies that are subject to the provisions of
66 section 8 of this act and training for ancillary personnel and implement
67 such program; and

68 (8) Index, by name and subject, all written orders and final decisions
69 and make all indices, proposed final decisions and final decisions
70 available for public inspection, and copying electronically and to the
71 extent required by the Freedom of Information Act, as defined in
72 section 1-200 of the general statutes.

73 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) Notwithstanding any
74 provision of the general statutes, each full-time employee or
75 permanent part-time employee of an agency subject to the provisions
76 of section 8 of this act whose primary duties (1) are to conduct hearings
77 in contested cases and issue final decisions or proposed final decisions,
78 including, but not limited to, human rights referees, staff attorneys,
79 hearing adjudicators and hearing officers, or (2) relate to providing
80 administrative services required for conducting such hearings and
81 issuing such decisions, shall be transferred to the Division of
82 Administrative Hearings, in accordance with the provisions of this
83 section and sections 4-38d, 4-38e and 4-39 of the general statutes.

84 (b) Persons transferred to the Division of Administrative Hearings
85 pursuant to this section and persons appointed by the Chief
86 Administrative Law Adjudicator pursuant to chapter 67 of the general
87 statutes shall be in the classified service, represented by the collective
88 bargaining representative of an employee organization and subject to
89 the provisions of chapter 68 of the general statutes. Persons transferred
90 to the Division of Administrative Hearings pursuant to this section
91 who are members of an employee organization, as defined in section 5-
92 270 of the general statutes, at the time of their transfer shall continue to
93 be represented by such employee organization.

94 (c) The salaries, seniority and benefits of persons transferred to the
95 Division of Administrative Hearings pursuant to this section shall not
96 be reduced as a result of the transfer.

97 (d) No promotions governed by any existing and applicable
98 memorandum of understanding between the Office of Labor Relations
99 and any collective bargaining representative for state employees shall
100 be denied, delayed, impaired or eliminated by the implementation of
101 sections 1 to 9, inclusive, of this act.

102 (e) (1) Persons transferred to the Division of Administrative
103 Hearings pursuant to this section who are members of a collective
104 bargaining unit at the time of their transfer shall (A) not lose the job
105 classification in which they are placed at the time of their transfer as a
106 result of the transfer, and (B) remain the beneficiaries of any existing
107 and applicable memorandum of understanding between the Office of
108 Labor Relations and any collective bargaining representative for state
109 employees. The rights and obligations contained in any memorandum
110 of understanding that applies to staff attorneys shall apply to
111 administrative law adjudicators transferred to the Division of
112 Administrative Hearings and appointed by the Chief Administrative
113 Law Adjudicator.

114 (2) Persons transferred to the Division of Administrative Hearings
115 pursuant to this section who are not members of a collective

116 bargaining unit at the time of their transfer, and persons appointed by
117 the Chief Administrative Law Adjudicator, shall (A) have a job
118 classification commensurate with persons who are members of a
119 collective bargaining unit at the time of their transfer, and (B) be
120 subject to and become the beneficiaries of the terms of any existing and
121 applicable memorandum of understanding between the Office of
122 Labor Relations and any collective bargaining representative for state
123 employees, including the rights and obligations contained in any
124 memorandum of understanding that applies to staff attorneys.

125 (f) Time served in other agencies by persons transferred to the
126 Division of Administrative Hearings pursuant to this section shall be
127 recognized as qualifying experience and time in the Division of
128 Administrative Hearings shall count as successful and satisfactory
129 performance for career progression under any existing and applicable
130 memorandum of understanding between the Office of Labor Relations
131 and any collective bargaining representative for state employees.

132 (g) An administrative law adjudicator, assistant or other employee
133 of the Division of Administrative Hearings who is removed,
134 suspended, demoted or subjected to disciplinary action or other
135 adverse employment action may appeal such action in accordance
136 with the applicable collective bargaining agreement.

137 Sec. 5. (NEW) (*Effective October 1, 2010*) (a) Each administrative law
138 adjudicator shall have been admitted to the practice of law in this state
139 for at least two years, except that such requirement shall not apply to
140 any administrative law adjudicator transferred pursuant to section 4 of
141 this act.

142 (b) An administrative law adjudicator shall have the powers
143 granted to hearing officers and presiding officers pursuant to sections
144 1 to 9, inclusive, section 20 of this act and chapter 54 of the general
145 statutes.

146 Sec. 6. (NEW) (*Effective October 1, 2010*) (a) All hearings in contested
147 cases conducted by the Division of Administrative Hearings shall be

148 conducted by an administrative law adjudicator assigned by the Chief
149 Administrative Law Adjudicator and shall be conducted in accordance
150 with sections 1 to 9, inclusive, and section 20 of this act and sections 4-
151 176e to 4-181a, inclusive, of the general statutes, as amended by this
152 act.

153 (b) Unless different time limits are provided by any provision of the
154 general statutes for contested cases before an agency, the time limits
155 provided in sections 4-176e to 4-181a, inclusive, of the general statutes,
156 as amended by this act, shall apply to all contested cases conducted by
157 the Division of Administrative Hearings.

158 Sec. 7. (NEW) (*Effective October 1, 2010*) An administrative law
159 adjudicator may conduct hearings and settlement negotiations held by
160 the Division of Administrative Hearings. If a contested case is not
161 resolved through settlement negotiations, either party may proceed to
162 a hearing. An administrative law adjudicator who attempts to settle a
163 matter may not thereafter be assigned to hear the matter. If a contested
164 case is resolved by stipulation, agreed settlement or consent order, the
165 administrative law adjudicator shall issue an order dismissing the
166 contested case. The order shall incorporate by reference such
167 stipulation, agreed settlement or consent order which shall be attached
168 thereto. The order shall further provide that no findings of fact or
169 conclusions of law have been made regarding any alleged violations of
170 the law. The order and stipulation, agreed settlement or consent order
171 may be enforceable by any party in Superior Court. A party may
172 petition the superior court for the judicial district of New Britain for
173 enforcement of the order and stipulation, agreed settlement or consent
174 order and for appropriate temporary relief or a restraining order.

175 Sec. 8. (NEW) (*Effective October 1, 2010*) (a) Notwithstanding any
176 provision of the general statutes, and except as otherwise provided in
177 section 9 of this act, on and after October 1, 2010, the Division of
178 Administrative Hearings shall conduct hearings and render proposed
179 final decisions or, if authorized or required by law, final decisions in
180 contested cases:

181 (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of
182 the general statutes, as amended by this act;

183 (2) Brought by or before the Department of Children and Families;

184 (3) Brought by or before the Department of Transportation;

185 (4) Brought by or before the Commission on Human Rights and
186 Opportunities; and

187 (5) Brought by or before the Department of Motor Vehicles.

188 (b) Any agency that is not required to refer contested cases to the
189 Division of Administrative Hearings pursuant to this section may,
190 with the consent of the Chief Administrative Law Adjudicator, refer
191 any contested case brought by or before such agency, to the Division of
192 Administrative Hearings for purposes of settlement or a full
193 adjudication of the contested case by an administrative law
194 adjudicator. If an agency requests a full adjudication of the contested
195 case, the agency shall specify whether the decision shall be a final
196 decision or a proposed final decision. The agency referring the
197 contested case shall incur the cost of transcripts if the Chief
198 Administrative Law Adjudicator requests transcription services for the
199 hearing. Upon issuance of the final decision or proposed final decision,
200 the Chief Administrative Law Adjudicator shall forward the record to
201 the referring agency. The Chief Administrative Law Adjudicator, the
202 presiding officer and the Commission on Human Rights and
203 Opportunities shall not be parties to any appeal of a decision or
204 settlement conducted pursuant to this section.

205 (c) The powers, functions and duties of conducting hearings and
206 issuing decisions in contested cases enumerated in subsections (a) and
207 (b) of this section shall, on the date specified in subsection (a) of this
208 section or the date of referral in subsection (b) of this section, be
209 transferred to the Division of Administrative Hearings in accordance
210 with the provisions of sections 4-38d, 4-38e and 4-39 of the general
211 statutes.

212 (d) Any hearing officer under contract with an agency to conduct
213 hearings and issue decisions in contested cases enumerated in
214 subsections (a) and (b) of this section shall, on and after the date
215 specified in subsection (a) of this section or the date of referral in
216 subsection (b) of this section, continue to serve until all such cases
217 assigned to such hearing officer are completed, unless the Chief
218 Administrative Law Adjudicator determines that the case shall be
219 reassigned to an administrative law adjudicator.

220 (e) Nothing in this section shall be construed to apply to the State
221 Board of Mediation and Arbitration or the State Board of Labor
222 Relations.

223 (f) The Department of Children and Families shall execute any
224 requisite contract with the Division of Administrative Hearings that is
225 necessary to maintain and secure any federal or state funding or
226 reimbursement.

227 Sec. 9. (NEW) (*Effective October 1, 2009*) No administrative law
228 adjudicator may be assigned by the Chief Administrative Law
229 Adjudicator to hear a contested case with respect to:

230 (1) Any hearing that is required by federal law to be conducted by a
231 specific agency or other hearing authority; or

232 (2) Any matter where the head of the agency, or one or more of the
233 members of a multimember agency, presides at the hearing in a
234 contested case.

235 Sec. 10. Section 4-166 of the general statutes is repealed and the
236 following is substituted in lieu thereof (*Effective October 1, 2010*):

237 As used in this chapter and sections 1 to 9, inclusive, and section 20
238 of this act, unless the context otherwise requires:

239 (1) "Agency" means each state board, commission, department or
240 officer authorized by law to make regulations or to determine
241 contested cases, but does not include either house or any committee of

242 the General Assembly, the courts, the Council on Probate Judicial
243 Conduct, the Governor, Lieutenant Governor or Attorney General, or
244 town or regional boards of education, or automobile dispute
245 settlement panels established pursuant to section 42-181;

246 (2) "Contested case" means a proceeding, including but not
247 restricted to rate-making, price fixing and licensing, in which the legal
248 rights, duties or privileges of a party are required by state statute or
249 regulation to be determined by an agency or by the Division of
250 Administrative Hearings after an opportunity for hearing or in which a
251 hearing is in fact held, but does not include proceedings on a petition
252 for a declaratory ruling under section 4-176, as amended by this act,
253 hearings referred to in section 4-168 or hearings conducted by the
254 Department of Correction or the Board of Pardons and Paroles;

255 (3) "Final decision" means (A) the [agency] determination in a
256 contested case made pursuant to section 4-179, as amended by this act,
257 section 20 of this act and section 4-180, as amended by this act, (B) a
258 declaratory ruling issued by an agency pursuant to section 4-176, as
259 amended by this act, or (C) [an agency] a decision made after
260 reconsideration of a final decision. The term does not include a
261 preliminary or intermediate ruling or order, [of an agency,] or a ruling
262 [of an agency] granting or denying a petition for reconsideration;

263 (4) "Hearing officer" means an individual appointed by an agency to
264 conduct a hearing in an agency proceeding that is not conducted by an
265 administrative law adjudicator pursuant to section 8 of this act. Such
266 individual may be a staff employee of the agency;

267 (5) "Intervenor" means a person, other than a party, granted status
268 as an intervenor by an agency in accordance with the provisions of
269 subsection (d) of section 4-176 or subsection (b) of section 4-177a, as
270 amended by this act;

271 (6) "License" includes the whole or part of any agency permit,
272 certificate, approval, registration, charter or similar form of permission
273 required by law, but does not include a license required solely for

274 revenue purposes;

275 (7) "Licensing" includes the agency process respecting the grant,
276 denial, renewal, revocation, suspension, annulment, withdrawal or
277 amendment of a license;

278 (8) "Party" means each person (A) whose legal rights, duties or
279 privileges are required by statute to be determined by an agency
280 proceeding and who is named or admitted as a party, (B) who is
281 required by law to be a party in an agency proceeding, or (C) who is
282 granted status as a party under subsection (a) of section 4-177a, as
283 amended by this act;

284 (9) "Person" means any individual, partnership, corporation, limited
285 liability company, association, governmental subdivision, agency or
286 public or private organization of any character, but does not include
287 the agency conducting the proceeding;

288 (10) "Presiding officer" means the head of the agency presiding at a
289 hearing, the member of [an] a multimember agency, [or] the hearing
290 officer designated by the head of the agency to preside at [the] a
291 hearing or an administrative law adjudicator presiding at a hearing;

292 (11) "Proposed final decision" means a final decision proposed by an
293 agency or a presiding officer under section 4-179, as amended by this
294 act, or section 20 of this act;

295 (12) "Proposed regulation" means a proposal by an agency under
296 the provisions of section 4-168 for a new regulation or for a change in,
297 addition to or repeal of an existing regulation;

298 (13) "Regulation" means each agency statement of general
299 applicability, without regard to its designation, that implements,
300 interprets, or prescribes law or policy, or describes the organization,
301 procedure, or practice requirements of any agency. The term includes
302 the amendment or repeal of a prior regulation, but does not include
303 (A) statements concerning only the internal management of any

304 agency and not affecting private rights or procedures available to the
305 public, (B) declaratory rulings issued pursuant to section 4-176, as
306 amended by this act, or (C) intra-agency or interagency memoranda;

307 (14) "Regulation-making" means the process for formulation and
308 adoption of a regulation;

309 (15) "Administrative law adjudicator" has the same meaning as
310 provided in section 2 of this act; and

311 (16) "Head of the agency" means the individual or group of
312 individuals constituting the highest authority within an agency.

313 Sec. 11. Subsection (g) of section 4-176 of the general statutes is
314 repealed and the following is substituted in lieu thereof (*Effective*
315 *October 1, 2010*):

316 (g) If the agency conducts a hearing in a proceeding for a
317 declaratory ruling, the provisions of [subsection (b) of section 4-177c,]
318 section 4-178, as amended by this act, and section 4-179, as amended
319 by this act, shall apply to the hearing.

320 Sec. 12. Section 4-176e of the general statutes is repealed and the
321 following is substituted in lieu thereof (*Effective October 1, 2010*):

322 Except as otherwise required by the general statutes, a [hearing in
323 an agency proceeding may be held before (1)] contested case shall be
324 heard by (1) an administrative law adjudicator, (2) the head of the
325 agency, (3) one or more of the members of a multimember agency, or
326 (4) one or more hearing officers, provided no individual who has
327 personally carried out the function of an investigator in a contested
328 case may serve as a hearing officer in that case, [, or (2) one or more of
329 the members of the agency.]

330 Sec. 13. Section 4-177 of the general statutes is repealed and the
331 following is substituted in lieu thereof (*Effective October 1, 2010*):

332 (a) In a contested case, all parties shall be afforded an opportunity

333 for hearing after reasonable notice from the agency.

334 (b) The notice shall be in writing and shall include: (1) A statement
335 of the time, place [,] and nature of the hearing or, if the contested case
336 has been referred to the Division of Administrative Hearings, a
337 statement that the matter has been referred to the Division of
338 Administrative Hearings and that the time and place of the hearing
339 will be set by an administrative law adjudicator; (2) a statement of the
340 legal authority and jurisdiction under which the hearing is to be held;
341 (3) a reference to the particular sections of the statutes and regulations
342 involved; and (4) a short and plain statement of the matters asserted. If
343 the agency or party is unable to state the matters in detail at the time
344 the notice is served, the initial notice may be limited to a statement of
345 the issues involved. Thereafter, upon application, a more definite and
346 detailed statement shall be furnished.

347 (c) After an agency refers a contested case to the Division of
348 Administrative Hearings, the agency shall certify the official record in
349 such contested case to the Division of Administrative Hearings. The
350 Division of Administrative Hearings shall issue a notice in writing to
351 all parties that shall include a statement of the time, place and nature
352 of the hearing. Thereafter, a party shall file all documents that are to
353 become part of such record with the Division of Administrative
354 Hearings. The filing of such documents with the agency rather than
355 with the Division of Administrative Hearings shall not be a
356 jurisdictional defect and shall not be grounds for termination of the
357 proceeding, provided the administrative law adjudicator may assess
358 appropriate costs and sanctions against a party who misfiles such
359 documents on a showing of prejudice resulting from a wilful misfiling.
360 The Division of Administrative Hearings shall maintain the official
361 record of a contested case referred to said division.

362 [(c)] (d) Unless precluded by law, a contested case may be resolved
363 by stipulation, agreed settlement [,] or consent order or by the default
364 of a party.

365 [(d)] (e) The record in a contested case shall include: (1) Written
366 notices related to the case; (2) all petitions, pleadings, motions and
367 intermediate rulings; (3) evidence received or considered; (4) questions
368 and offers of proof, objections and rulings thereon; (5) the official
369 transcript, if any, of proceedings relating to the case, or, if not
370 transcribed, any recording or stenographic record of the proceedings;
371 (6) proposed final decisions and exceptions thereto; and (7) the final
372 decision.

373 [(e)] (f) Any recording or stenographic record of the proceedings
374 shall be transcribed on request of any party. The requesting party shall
375 pay the cost of such transcript, unless otherwise provided by law.
376 Nothing in this section shall relieve an agency of its responsibility
377 under section 4-183, as amended by this act, to transcribe the record for
378 an appeal.

379 Sec. 14. Section 4-177a of the general statutes is repealed and the
380 following is substituted in lieu thereof (*Effective October 1, 2010*):

381 (a) The presiding officer shall grant a person status as a party in a
382 contested case if [that] such officer finds that: (1) Such person has
383 submitted a written petition to the agency or presiding officer, and
384 mailed copies to all parties, at least five days before the date of
385 hearing; and (2) the petition states facts that demonstrate that the
386 petitioner's legal rights, duties or privileges shall be specifically
387 affected by [the agency's] a decision in the contested case.

388 (b) The presiding officer may grant any person status as an
389 intervenor in a contested case if [that] such officer finds that: (1) Such
390 person has submitted a written petition to the agency or presiding
391 officer, and mailed copies to all parties, at least five days before the
392 date of hearing; and (2) the petition states facts that demonstrate that
393 the petitioner's participation is in the interests of justice and will not
394 impair the orderly conduct of the proceedings.

395 (c) The five-day requirement in subsections (a) and (b) of this
396 section may be waived at any time before or after commencement of

397 the hearing by the presiding officer on a showing of good cause.

398 (d) If a petition is granted pursuant to subsection (b) of this section,
399 the presiding officer may limit the intervenor's participation to
400 designated issues in which the intervenor has a particular interest as
401 demonstrated by the petition and shall define the intervenor's rights to
402 inspect and copy records, physical evidence, papers and documents, to
403 introduce evidence [,] and to argue and cross-examine on those issues.
404 The presiding officer may further restrict the participation of an
405 intervenor in the proceedings, including the rights to inspect and copy
406 records, to introduce evidence and to cross-examine, so as to promote
407 the orderly conduct of the proceedings.

408 Sec. 15. Section 4-177b of the general statutes is repealed and the
409 following is substituted in lieu thereof (*Effective October 1, 2010*):

410 In a contested case, the presiding officer may administer oaths, take
411 testimony under oath relative to the case, subpoena witnesses and
412 require the production of records, physical evidence, papers and
413 documents to any hearing held in the case. If any person disobeys the
414 subpoena or, having appeared, refuses to answer any question put to
415 [him] such person or to produce any records, physical evidence,
416 papers and documents requested by the presiding officer, the
417 administrative law adjudicator or, if the hearing is conducted by the
418 agency, the agency, may apply to the superior court for the judicial
419 district of [Hartford] New Britain or for the judicial district in which
420 the person resides, or to any judge of that court if it is not in session,
421 setting forth the disobedience to the subpoena or refusal to answer or
422 produce, and the court or judge shall cite the person to appear before
423 the court or judge to show cause why the records, physical evidence,
424 papers and documents should not be produced or why a question put
425 to [him] such person should not be answered. Nothing in this section
426 shall be construed to limit the authority of the agency, the
427 administrative law adjudicator or any party as otherwise allowed by
428 law.

429 Sec. 16. Section 4-177c of the general statutes is repealed and the
430 following is substituted in lieu thereof (*Effective October 1, 2010*):

431 [(a)] In a contested case, each party and the agency, including an
432 agency conducting the proceeding, shall be afforded the opportunity
433 (1) to inspect and copy relevant and material records, papers and
434 documents not in the possession of the party or such agency, except as
435 otherwise provided by federal law or any other provision of the
436 general statutes, and (2) at a hearing, to respond, to cross-examine
437 other parties, intervenors [,] and witnesses, and to present evidence
438 and argument on all issues involved.

439 [(b) Persons not named as parties or intervenors may, in the
440 discretion of the presiding officer, be given an opportunity to present
441 oral or written statements. The presiding officer may require any such
442 statement to be given under oath or affirmation.]

443 Sec. 17. Section 4-178 of the general statutes is repealed and the
444 following is substituted in lieu thereof (*Effective October 1, 2010*):

445 In contested cases: (1) Any oral or documentary evidence may be
446 received, but the [agency] presiding officer shall, as a matter of policy,
447 provide for the exclusion of irrelevant, immaterial or unduly
448 repetitious evidence; (2) [agencies shall give effect to] the rules of
449 privilege recognized by law shall be given effect; (3) when a hearing
450 will be expedited and the interests of the parties will not be prejudiced
451 substantially, any part of the evidence may be received in written
452 form; (4) documentary evidence may be received in the form of copies
453 or excerpts, if the original is not readily available, and upon request,
454 parties and the agency, including an agency conducting the
455 proceeding, shall be given an opportunity to compare the copy with
456 the original; (5) a party and [such] the agency, including an agency
457 conducting the proceeding, may conduct cross-examinations required
458 for a full and true disclosure of the facts; (6) notice may be taken of
459 judicially cognizable facts; [and of] (7) in a proceeding conducted by
460 the agency or in an agency review of a proposed final decision, notice

461 may be taken of generally recognized technical or scientific facts
462 within the agency's specialized knowledge; [(7)] (8) parties shall be
463 notified in a timely manner of any material noticed, including any
464 agency memoranda or data, and they shall be afforded an opportunity
465 to contest the material so noticed; and [(8) the agency's] (9) in a
466 proceeding conducted by the agency or in an agency review of a
467 proposed final decision, the agency may use its experience, technical
468 competence [,] and specialized knowledge [may be used] in the
469 evaluation of the evidence.

470 Sec. 18. Section 4-178a of the general statutes is repealed and the
471 following is substituted in lieu thereof (*Effective October 1, 2010*):

472 If a hearing in a contested case or in a declaratory ruling proceeding
473 is held before a hearing officer or before less than a majority of the
474 members of the agency who are authorized by law to render a final
475 decision, a party, if permitted by regulation and before rendition of the
476 final decision, may request a review by a majority of the members of
477 the agency, of any preliminary, procedural or evidentiary ruling made
478 at the hearing. The majority of the members may make an appropriate
479 order, including the reconvening of the hearing. The provisions of this
480 section shall not apply to a hearing conducted by an administrative
481 law adjudicator.

482 Sec. 19. Section 4-179 of the general statutes is repealed and the
483 following is substituted in lieu thereof (*Effective October 1, 2010*):

484 (a) When, in an agency proceeding that is not conducted by an
485 administrative law adjudicator, a majority of the members of the
486 agency who are to render the final decision have not heard the matter
487 or read the record, the decision, if adverse to a party, shall not be
488 rendered until a proposed final decision is served upon the parties,
489 and an opportunity is afforded to each party adversely affected to file
490 exceptions and present briefs and oral argument to the members of the
491 agency who are to render the final decision.

492 (b) A proposed final decision made under this section shall be in

493 writing and [contain a statement of the reasons for the decision and a
494 finding of facts and conclusion of law on each issue of fact or law
495 necessary to the decision] shall comply with the requirements of
496 subsection (c) of section 4-180, as amended by this act.

497 (c) Except when authorized by law to render a final decision for an
498 agency, a hearing officer shall, after hearing a matter, make a proposed
499 final decision.

500 (d) The parties and the agency conducting the proceeding, by
501 written stipulation, may waive compliance with this section.

502 Sec. 20. (NEW) (*Effective October 1, 2010*) (a) A proposed final
503 decision rendered by an administrative law adjudicator shall be
504 delivered promptly to each party or the party's authorized
505 representative, and to the agency, personally or by United States mail,
506 certified or registered, postage prepaid, return receipt requested. After
507 such proposed final decision is rendered, the record in the contested
508 case shall be delivered promptly to the agency.

509 (b) A proposed final decision rendered by an administrative law
510 adjudicator shall become a final decision of the agency unless the head
511 of the agency, not later than twenty-one days following the date the
512 proposed final decision is delivered or mailed to the agency, modifies
513 or rejects the proposed final decision, provided the head of the agency
514 may, before expiration of such time period and for good cause, certify
515 the extension of such time period for not more than an additional
516 twenty-one days. If the head of the agency modifies or rejects the
517 proposed final decision, the head of the agency shall state the reason
518 for the modification or rejection on the record. In reviewing a proposed
519 final decision rendered by an administrative law adjudicator, the head
520 of the agency may afford each party, including the agency, an
521 opportunity to present briefs and may afford each party, including the
522 agency, an opportunity to present oral argument.

523 (c) If, within the time period provided in subsection (b) of this
524 section, the head of the agency, in reviewing a proposed final decision

525 rendered by an administrative law adjudicator, determines that
526 additional evidence is necessary, the head of the agency shall refer the
527 matter to the Division of Administrative Hearings. The Chief
528 Administrative Law Adjudicator shall assign the administrative law
529 adjudicator who rendered such proposed final decision to take the
530 additional evidence unless such administrative law adjudicator is
531 unavailable. After taking the additional evidence, the administrative
532 law adjudicator shall, not later than thirty days following such referral,
533 prepare a proposed final decision as provided in this section based on
534 such additional evidence and the record of the prior hearing.

535 (d) A proposed final decision made under this section shall be in
536 writing and shall comply with the requirements of subsection (c) of
537 section 4-180 of the general statutes, as amended by this act.

538 Sec. 21. Section 4-180 of the general statutes is repealed and the
539 following is substituted in lieu thereof (*Effective October 1, 2010*):

540 (a) Each agency and administrative law adjudicator shall proceed
541 with reasonable dispatch to conclude any matter pending before [it]
542 such agency or administrative law adjudicator and, in all hearings of
543 contested cases conducted by the agency or the administrative law
544 adjudicator, shall render a final decision within ninety days following
545 the close of evidence or the due date for the filing of briefs, whichever
546 is later. [, in such proceedings.]

547 (b) If, in any contested case, any agency or administrative law
548 adjudicator fails to comply with the provisions of subsection (a) of this
549 section, [in any contested case, any party thereto] any party to such
550 contested case may apply to the superior court for the judicial district
551 of [Hartford] New Britain for an order requiring the agency or
552 administrative law adjudicator to render a proposed final decision or a
553 final decision forthwith. The court, after hearing, shall issue an
554 appropriate order.

555 (c) A final decision in a contested case shall be in writing or, if there
556 is no proposed final decision, orally stated on the record. [and, if

557 adverse to a party,] A proposed final decision and a final decision in a
558 contested case shall include [the agency's] findings of fact and
559 conclusions of law necessary to [its] the decision and shall be made by
560 applying all pertinent provisions of law. Findings of fact shall be based
561 exclusively on the evidence in the record and on matters noticed. The
562 [agency shall state in] proposed final decision and the final decision
563 shall contain the name of each party and the most recent mailing
564 address, provided to the agency, of the party or [his] the party's
565 authorized representative. If the final decision is orally stated on the
566 record, each such name and mailing address shall be included in the
567 record.

568 (d) The final decision shall be delivered promptly to each party or
569 [his] the party's authorized representative and, in the case of a final
570 decision by an administrative law adjudicator authorized by law to
571 render such decision, to the agency, personally or by United States
572 mail, certified or registered, postage prepaid, return receipt requested.
573 [The] An agency rendering a final decision shall immediately transmit
574 a copy of such decision to the Division of Administrative Hearings. A
575 proposed final decision that becomes a final decision because of
576 agency inaction, as provided in subsection (b) of section 20 of this act,
577 shall become effective at the expiration of the time period specified in
578 said subsection or on a later date specified in such proposed final
579 decision. Any other final decision shall be effective when personally
580 delivered or mailed or on a later date specified [by the agency] in such
581 final decision. The date of delivery or mailing of a proposed final
582 decision and a final decision shall be endorsed on the front of the
583 decision or on a transmittal sheet included with the decision.

584 Sec. 22. Subsection (a) of section 4-181 of the general statutes is
585 repealed and the following is substituted in lieu thereof (*Effective*
586 *October 1, 2010*):

587 (a) Unless required for the disposition of ex parte matters
588 authorized by law, no hearing officer, administrative law adjudicator
589 or member of an agency who, in a contested case, is to render a final

590 decision or to make a proposed final decision shall communicate,
591 directly or indirectly, in connection with any issue of fact, with any
592 person or party, or, in connection with any issue of law, with any party
593 or the party's representative, without notice and opportunity for all
594 parties to participate.

595 Sec. 23. Section 4-181a of the general statutes is repealed and the
596 following is substituted in lieu thereof (*Effective October 1, 2010*):

597 (a) (1) Unless otherwise provided by law, a party or the agency in a
598 contested case may, within fifteen days after the personal delivery or
599 mailing of the final decision or within fifteen days after the date that a
600 proposed final decision becomes a final decision because of agency
601 inaction, as provided in subsection (b) of section 20 of this act, file with
602 the [agency] authority that rendered the final decision a petition for
603 reconsideration of the decision on the ground that: (A) An error of fact
604 or law should be corrected; (B) new evidence has been discovered
605 which materially affects the merits of the case and which for good
606 reasons was not presented in the agency proceeding; or (C) other good
607 cause for reconsideration has been shown. Within twenty-five days of
608 the filing of the petition, [the agency] such authority shall decide
609 whether to reconsider the final decision. The failure of [the agency]
610 such authority to make [that] such determination within twenty-five
611 days of such filing shall constitute a denial of the petition.

612 (2) Within forty days of the personal delivery or mailing of the final
613 decision, the [agency] authority that rendered the final decision,
614 regardless of whether a petition for reconsideration has been filed,
615 may decide to reconsider the final decision.

616 (3) If the [agency] authority that rendered the final decision decides
617 to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of
618 this subsection, [the agency] such authority shall proceed in a
619 reasonable time to conduct such additional proceedings as may be
620 necessary to render a decision modifying, affirming or reversing the
621 final decision, provided such decision made after reconsideration shall

622 be rendered not later than ninety days following the date on which
623 [the agency] such authority decides to reconsider the final decision. If
624 [the agency] such authority fails to render such decision made after
625 reconsideration within such ninety-day period, the original final
626 decision shall remain the final decision in the contested case for
627 purposes of any appeal under the provisions of section 4-183, as
628 amended by this act.

629 (4) Except as otherwise provided in subdivision (3) of this
630 subsection, [an agency] a decision made after reconsideration pursuant
631 to this subsection shall become the final decision in the contested case
632 in lieu of the original final decision for purposes of any appeal under
633 the provisions of section 4-183, as amended by this act, including, but
634 not limited to, an appeal of (A) any issue decided by the [agency]
635 authority that rendered the final decision in its original final decision
636 that was not the subject of any petition for reconsideration or [the
637 agency's] such authority's decision made after reconsideration, (B) any
638 issue as to which reconsideration was requested but not granted, and
639 (C) any issue that was reconsidered but not modified by [the agency]
640 such authority from the determination of such issue in the original
641 final decision.

642 (b) On a showing of changed conditions, the [agency] authority that
643 rendered the final decision may reverse or modify the final decision, at
644 any time, at the request of any person or on [the agency's] such
645 authority's own motion. The procedure set forth in this chapter for
646 contested cases shall be applicable to any proceeding in which such
647 reversal or modification of any final decision is to be considered. The
648 party or parties who were the subject of the original final decision, or
649 their successors, if known, and intervenors in the original contested
650 case, shall be notified of the proceeding and shall be given the
651 opportunity to participate in the proceeding. Any decision to reverse
652 or modify a final decision shall make provision for the rights or
653 privileges of any person who has been shown to have relied on such
654 final decision.

655 (c) The [agency] authority that rendered the final decision may,
656 without further proceedings, modify a final decision to correct any
657 clerical error. A person may appeal [that] such modification under the
658 provisions of section 4-183, as amended by this act, or, if an appeal is
659 pending when the modification is made, may amend the appeal.

660 (d) For the purposes of this section and section 4-183, as amended
661 by this act, in the case of a proposed final decision that becomes a final
662 decision because of agency inaction, as provided in subsection (b) of
663 section 20 of this act, the authority that rendered the final decision
664 shall be deemed to be the agency.

665 Sec. 24. Section 4-183 of the general statutes is repealed and the
666 following is substituted in lieu thereof (*Effective October 1, 2010*):

667 (a) A person who has exhausted all administrative remedies
668 available within the agency and who is aggrieved by a final decision
669 may appeal to the Superior Court as provided in this section. The filing
670 of a petition for reconsideration is not a prerequisite to the filing of
671 such an appeal.

672 (b) A person may appeal a preliminary, procedural or intermediate
673 agency action or ruling to the Superior Court if (1) it appears likely that
674 the person will otherwise qualify under this chapter to appeal from the
675 final agency action or ruling, and (2) postponement of the appeal
676 would result in an inadequate remedy.

677 (c) (1) Within forty-five days after mailing of the final decision
678 under section 4-180, as amended by this act, or, if there is no mailing,
679 within forty-five days after personal delivery of the final decision
680 under said section, or (2) within forty-five days after the [agency]
681 authority that rendered the final decision denies a petition for
682 reconsideration of the final decision pursuant to subdivision (1) of
683 subsection (a) of section 4-181a, as amended by this act, or (3) within
684 forty-five days after mailing of the final decision made after
685 reconsideration pursuant to subdivisions (3) and (4) of subsection (a)
686 of section 4-181a, as amended by this act, or, if there is no mailing,

687 within forty-five days after personal delivery of the final decision
688 made after reconsideration pursuant to said subdivisions, or (4) within
689 forty-five days after the expiration of the ninety-day period required
690 under subdivision (3) of subsection (a) of section 4-181a, as amended
691 by this act, if [the agency] such authority decides to reconsider the final
692 decision and fails to render a decision made after reconsideration
693 within such period, or (5) if a proposed final decision becomes a final
694 decision because of agency inaction, as provided in subsection (b) of
695 section 20 of this act, within forty-five days after the decision becomes
696 final, whichever is applicable and is later, a person appealing as
697 provided in this section shall serve a copy of the appeal on the agency
698 [that rendered the final decision] at its office or at the office of the
699 Attorney General in Hartford and file the appeal with the clerk of the
700 superior court for the judicial district of New Britain or for the judicial
701 district wherein the person appealing resides or, if [that] such person is
702 not a resident of this state, with the clerk of the court for the judicial
703 district of New Britain. An appeal of a final decision under this section
704 shall be taken within such applicable forty-five-day period regardless
705 of the effective date of the final decision. Within [that] such time, the
706 person appealing shall also serve a copy of the appeal on each party
707 listed in the final decision at the address shown in the decision,
708 provided failure to make such service within forty-five days on parties
709 other than the agency [that rendered the final decision] shall not
710 deprive the court of jurisdiction over the appeal. Service of the appeal
711 shall be made by United States mail, certified or registered, postage
712 prepaid, return receipt requested, without the use of a state marshal or
713 other officer, or by personal service by a proper officer or indifferent
714 person making service in the same manner as complaints are served in
715 ordinary civil actions. If service of the appeal is made by mail, service
716 shall be effective upon deposit of the appeal in the mail.

717 (d) The person appealing, not later than fifteen days after filing the
718 appeal, shall file or cause to be filed with the clerk of the court an
719 affidavit, or the state marshal's return, stating the date and manner in
720 which a copy of the appeal was served on each party and on the

721 agency [that rendered the final decision,] and, if service was not made
722 on a party, the reason for failure to make service. If the failure to make
723 service causes prejudice to any party to the appeal or to the agency, the
724 court, after hearing, may dismiss the appeal.

725 (e) If service has not been made on a party, the court, on motion,
726 shall make such orders of notice of the appeal as are reasonably
727 calculated to notify each party not yet served.

728 (f) The filing of an appeal shall not, of itself, stay enforcement of [an
729 agency] a final decision. An application for a stay may be made to the
730 agency, to the court or to both. Filing of an application with the agency
731 shall not preclude action by the court. A stay, if granted, shall be on
732 appropriate terms.

733 (g) Within thirty days after the service of the appeal, or within such
734 further time as may be allowed by the court, the agency shall
735 transcribe any portion of the record that has not been transcribed and
736 transmit to the reviewing court the original or a certified copy of the
737 entire record of the proceeding appealed from, which shall include the
738 [agency's] findings of fact and conclusions of law, separately stated. By
739 stipulation of all parties to such appeal proceedings, the record may be
740 shortened. A party unreasonably refusing to stipulate to limit the
741 record may be taxed by the court for the additional costs. The court
742 may require or permit subsequent corrections or additions to the
743 record.

744 (h) If, before the date set for hearing on the merits of an appeal,
745 application is made to the court for leave to present additional
746 evidence, and it is shown to the satisfaction of the court that the
747 additional evidence is material and that there were good reasons for
748 failure to present it in the proceeding before the [agency] authority that
749 rendered the final decision, the court may order that the additional
750 evidence be taken before [the agency] such authority upon conditions
751 determined by the court. [The agency] Such authority may modify its
752 findings and decision by reason of the additional evidence and shall

753 file [that] such evidence and any modifications, new findings [.] or
754 decisions with the reviewing court.

755 (i) [The] Except as otherwise provided by law, the appeal shall be
756 conducted by the court without a jury and shall be confined to the
757 record. If alleged irregularities in procedure before the [agency]
758 presiding officer are not shown in the record or if facts necessary to
759 establish aggrievement are not shown in the record, proof limited
760 thereto may be taken in the court. The court, upon request, shall hear
761 oral argument and receive written briefs.

762 (j) [The] Unless a different standard of review is provided by law,
763 the court shall not substitute its judgment for that of the [agency]
764 authority that rendered the final decision as to the weight of the
765 evidence on questions of fact. The court shall affirm the final decision
766 [of the agency] unless the court finds that substantial rights of the
767 person appealing have been prejudiced because the administrative
768 findings, inferences, conclusions [.] or decisions are: (1) In violation of
769 constitutional or statutory provisions; (2) in excess of the statutory
770 authority of the agency; (3) made upon unlawful procedure; (4)
771 affected by other error of law; (5) clearly erroneous in view of the
772 reliable, probative [.] and substantial evidence on the whole record; or
773 (6) arbitrary or capricious or characterized by abuse of discretion or
774 clearly unwarranted exercise of discretion. If the court finds such
775 prejudice, [it] the court shall sustain the appeal and, if appropriate,
776 may render a judgment under subsection (k) of this section or remand
777 the case for further proceedings. For the purposes of this section, a
778 remand is a final judgment.

779 (k) If a particular agency action is required by law, the court, on
780 sustaining the appeal, may render a judgment that modifies the
781 [agency] final decision, orders the particular agency action, or orders
782 the agency to take such action as may be necessary to effect the
783 particular action.

784 (l) In all appeals taken under this section, costs may be taxed in

785 favor of the prevailing party in the same manner, and to the same
786 extent, that costs are allowed in judgments rendered by the Superior
787 Court. No costs shall be taxed against the state, except as provided in
788 section 4-184a.

789 (m) In any case in which a person appealing claims that [he] such
790 person cannot pay the costs of an appeal under this section, [he] such
791 person shall, within the time permitted for filing the appeal, file with
792 the clerk of the court to which the appeal is to be taken an application
793 for waiver of payment of such fees, costs and necessary expenses,
794 including the requirements of bond, if any. The application shall
795 conform to the requirements prescribed by rule of the judges of the
796 Superior Court. After such hearing as the court determines is
797 necessary, the court shall render its judgment on the application,
798 which judgment shall contain a statement of the facts the court has
799 found, with its conclusions thereon. The filing of the application for the
800 waiver shall toll the time limits for the filing of an appeal until such
801 time as a judgment on such application is rendered.

802 Sec. 25. Subsection (e) of section 1-82a of the general statutes is
803 repealed and the following is substituted in lieu thereof (*Effective*
804 *October 1, 2010*):

805 (e) The judge trial referee shall make public a finding of probable
806 cause not later than five business days after any such finding. At such
807 time the entire record of the investigation shall become public, except
808 that the Office of State Ethics may postpone examination or release of
809 such public records for a period not to exceed fourteen days for the
810 purpose of reaching a stipulation agreement pursuant to subsection
811 [(c)] (d) of section 4-177, as amended by this act. Any such stipulation
812 agreement or settlement shall be approved by a majority of those
813 members present and voting.

814 Sec. 26. Subsection (e) of section 1-93a of the general statutes is
815 repealed and the following is substituted in lieu thereof (*Effective*
816 *October 1, 2010*):

817 (e) The judge trial referee shall make public a finding of probable
 818 cause not later than five business days after any such finding. At such
 819 time, the entire record of the investigation shall become public, except
 820 that the Office of State Ethics may postpone examination or release of
 821 such public records for a period not to exceed fourteen days for the
 822 purpose of reaching a stipulation agreement pursuant to subsection
 823 [(c)] (d) of section 4-177, as amended by this act. Any stipulation
 824 agreement or settlement entered into for a violation of this part shall be
 825 approved by a majority of its members present and voting.

826 Sec. 27. (*Effective October 1, 2010*) On or before January 1, 2012, the
 827 Legislative Program Review and Investigations Committee shall
 828 submit to the joint standing committee of the General Assembly
 829 having cognizance of matters relating to the judiciary a feasibility
 830 analysis and implementation plan for the transfer of contested cases
 831 conducted by the Department of Social Services to the Division of
 832 Administrative Hearings.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	New section
Sec. 3	<i>October 1, 2010</i>	New section
Sec. 4	<i>October 1, 2010</i>	New section
Sec. 5	<i>October 1, 2010</i>	New section
Sec. 6	<i>October 1, 2010</i>	New section
Sec. 7	<i>October 1, 2010</i>	New section
Sec. 8	<i>October 1, 2010</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2010</i>	4-166
Sec. 11	<i>October 1, 2010</i>	4-176(g)
Sec. 12	<i>October 1, 2010</i>	4-176e
Sec. 13	<i>October 1, 2010</i>	4-177
Sec. 14	<i>October 1, 2010</i>	4-177a
Sec. 15	<i>October 1, 2010</i>	4-177b
Sec. 16	<i>October 1, 2010</i>	4-177c
Sec. 17	<i>October 1, 2010</i>	4-178

Sec. 18	<i>October 1, 2010</i>	4-178a
Sec. 19	<i>October 1, 2010</i>	4-179
Sec. 20	<i>October 1, 2010</i>	New section
Sec. 21	<i>October 1, 2010</i>	4-180
Sec. 22	<i>October 1, 2010</i>	4-181(a)
Sec. 23	<i>October 1, 2010</i>	4-181a
Sec. 24	<i>October 1, 2010</i>	4-183
Sec. 25	<i>October 1, 2010</i>	1-82a(e)
Sec. 26	<i>October 1, 2010</i>	1-93a(e)
Sec. 27	<i>October 1, 2010</i>	New section

GAE *Joint Favorable Subst.*